

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Granite Rock Company,

NO. C 04-02767 JW

Plaintiff(s),

**ORDER DENYING MOTION FOR
CERTIFICATION OF AN ORDER FOR
APPEAL PURSUANT TO 28 U.S.C. §1292(b)**

v.

International Brotherhood of Teamsters,
Freight, C et al.,

Defendant(s).

Plaintiff Granite Rock filed a "Motion Requesting Certification of an Order for Appeal Pursuant to 28 U.S.C. §1292(b)," and noticed the motion for hearing on January 9, 2006. Plaintiff seeks an immediate appeal of the Court's "Order Granting Defendant's Motion for Partial Summary Judgment and Denying Defendant's Motion to Strike Plaintiff's Jury Demand," which was issued on November 21, 2005 ("Order"). Plaintiff contends that the Order raises a question of first impression, namely "whether under California Trucking Association v. Teamsters Local 70, 679 F.2d 1275 (9th Cir. 1981), a party to a collective bargaining agreement has repudiated the agreement by (1) denying the existence of the contract, thus forcing the other party to pursue its case in district court, and (2) thereafter asserting inconsistent, bad faith legal positions with respect to arbitrability during the course of the lawsuit." Motion, p.3. The Court finds it appropriate to take the motion under submission for decision based on the papers filed by the parties without oral argument pursuant to Civil Local Rule 7-1(b).

Based upon all papers filed to date, the Court denies Plaintiff's motion. Pursuant to 28 U.S.C. §1292(b), an interlocutory order should be certified for an immediate appeal if the order "involves a controlling question of law as to which there is substantial ground for difference opinion, and an immediate

1 appeal from the order may materially advance the ultimate termination of the litigation.” It is this Court’s
2 view that the Order Plaintiff seeks to appeal does not involve a controlling question of law as to which there
3 is substantial ground for difference opinion. Rather, it is the Court’s view that the Order involved a
4 relatively straightforward analysis of the law of waiver and repudiation to the particular facts of this case.

5 Dated: January 4, 2006

6 04cv2767certification

/s/James Ware

JAMES WARE

United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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11 **Dated: January 4, 2006**

Richard W. Wieking, Clerk

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By: /s/JW chambers
Melissa Peralta
Courtroom Deputy